months later one hundred and thirty thousand shares were issued to the vendors, and twenty thousand to outside subscribers. The corporation sued to rescind the sale of the defendant's parcel, or to recover his profits. *Held*, that the corporation, being bound by the assent originally given, has no remedy. *Old Dominion, etc., Co.* v. *Lewisohn*, 210 U. S. 206. See NOTES, p. 48.

CRIMINAL LAW — FORMER JEOPARDY — CONVICTION BY COURT MARTIAL AS BAR TO CRIMINAL PROSECUTION. — To an indictment for grand larceny the defendant pleaded former jeopardy. It appeared that he had been a member of the New York National Guard and had been tried by court martial on charges setting forth the same acts for which he was indicted. He had been found guilty and dismissed from the service. *Held*, that the plea is no bar to the prosecution. *People* v. *Wendel*, 37 N. Y. L. J. 797 (N. Y., App. Div., May, 1908).

An acquittal by a United States Army court martial will not bar an indictment in a state court; for the same act may constitute two offenses, — one against the United States, the other against the state. *State* v. *Rankin*, 4 Coldw. (Tenn.) 145. But a soldier acquitted of a charge of homicide by such a court martial cannot later be tried for the same act by a United States civil court. *Grafton* v. *U. S.*, 206 U. S. 333. There, however, the act was an offense against the United States alone, and, further, that court martial has jurisdiction and power to punish concurrent with the civil courts. *Ex parte Mason*, 105 U. S. 696. Trial by such a court martial may be said quite reasonably to constitute former jeopardy. But a New York court martial cannot inflict any punishment more serious than dismissal from the service and the imposition of a small fine. *N. Y. Military Code*, § 95. The defendant in the present case, then, had been formerly convicted of a breach of military discipline. But his acts were also a crime against the state, of which the state court martial had no jurisdiction. Clearly, therefore, he was never in jeopardy for it.

DAMAGES — CONSEQUENTIAL DAMAGES — DEVIATION OF ROUTE BY CARRIER. — The defendant railroad shipped the plaintiff's goods by a route different from that agreed upon, so that the plaintiff lost the benefit of a contract of sale, which provided that the sale could be avoided by the buyer if the goods arrived by other than a specified route. *Held*, that the plaintiff cannot recover for such loss. *St. Louis Southwestern Ry. Co.* v. *La. and Texas Lumber Co.*, 109 S. W. 1143 (Tex., Ct. Civ. App.).

When an action is brought upon the contract of carriage, the carrier's liability is limited to such damages as might reasonably be considered as arising from its breach, or such as might reasonably be supposed to have been in the contemplation of the parties when they made the contract. *Horne* v. *Midland Ry. Co.*, L. R. 8 C. P. 131. Under this rule the decision in the principal case is clearly correct if the action be considered as brought upon the contract. But the deviation might be treated as a conversion. *Phillips* v. *Brigham*, 26 Ga. 617. And in tort the damages which may be recovered are those which are the natural and proximate result of the unlawful act, even though not contemplated. *Brown* v. *Chicago, etc., Ry. Co.*, 54 Wis. 342. But by the great weight of authority the loss of a contract, though resulting from the tort, is regarded as too remote a consequence to support a recovery of damages. *Seymour* v. *Ives*, 46 Conn. 109. Thus the result reached in the present case is sound, irrespective of the form of the action.

DECEIT — DAMAGES — MISREPRESENTATION OF TERMS OF INSURANCE. — The defendant's agent fraudulently represented to the plaintiff that his life insurance policies provided for insurance for a certain term and also for subsequent repayment of the premiums with interest. In fact the policies provided for no substantial benefits except upon death. The plaintiff accepted the policies and paid the premiums until the expiration of the term. He then brought an action of deceit against the defendant. *Held*, that the plaintiff may recover the amount of the premiums paid with interest. *Sykes* v. *Life Ins. Co. of Va.*, 61 S. E. 610 (N. C.).

The court reasoned that since the plaintiff might have obtained reformation

of the policies and specific performance of the contract, he was entitled to damages on such a basis. Probably reformation was an appropriate remedy. *Smith* v. *Jordan*, 13 Minn. 264. However, such was not the relief sought. The result reached follows the weight of authority and the prior decisions of the same court in holding that damages in an action of deceit are to be measured by the difference in value between what the plaintiff received and what he would have received had the representations been true. *Heddin* v. *Griffin*, 136 Mass. 229; *Lunn* v. *Shermer*, 93 N. C. 164. The minority, and seemingly the correct, view considers the plaintiff's loss and awards the difference in value between what he gave and what he received. *Smith* v. *Bolles*, 132 U. S. 125. In the principal case the plaintiff had received a benefit by way of insurance for ten years. His loss was therefore the difference between the value of this insurance and the amount paid in premiums. It is submitted that on principle the damages should have been so measured. See 14 HARV. L. REV. 454.

EQUITY — INJUNCTION — CRIMINAL PROCEEDINGS. — The plaintiff asked for an injunction to restrain the defendant, the Police Commissioner of New York City, from a threatened interference with his business for violation of the Sunday law. *Held*, that the injunction cannot be granted. *Eden Musee American Co.* v. *Bingham*, 125 N. Y. App. Div. 780.

For a discussion of the principles involved, see 14 HARV. L. REV. 293.

GIFTS — IMPERFECT GIFT — APPOINTMENT OF DONEE AS EXECUTRIX. — A expressed an intention to give his wife B some bonds, but died before the gift was completed, having appointed B his executrix. *Held*, that the imperfect gift is perfected by the vesting of the property in B as executrix, and that the intention to give the beneficial interest to B is sufficient to countervail the equity of the beneficiaries under the will. *Stewart* v. *McLaughlin*, [1908] 2 Ch. 251.

This decision, carried to its logical extension, would permit a testator to make a valid gift to his executor by merely telling him that he might on the testator's death take whatever personality he cared to. It is submitted that on principle this doctrine is wholly unsound. For the transaction here cannot take effect as a trust, since an intended gift, which has failed, cannot be converted into an unintended trust. *Richards* v. *Delbridge*, L. R. 18 Eq. 11. Nor can it be sustained as a gift *inter vivos*, for there was no delivery. *Allen-West Commission Co.* v. *Grumbles*, 129 Fed. 287. Nor is it to be supported as a testamentary disposition, since it lacks the formalities required by the Wills Act. And though upon the death of a testator the legal title is vested in the executor, nevertheless, it is held in a representative capacity, and a promise of a testator, though based upon a meritorious consideration, does not give rise to an equity which can be successfully interposed at the suit of a beneficiary. *Whitaker* v. *Whitaker*, 52 N. Y. 368.

INDICTMENT AND INFORMATION — FINDING AND FILING INDICTMENT — EXAMINATION OF ACCUSED BEFORE GRAND JURY. — The defendants were compelled to be sworn as witnesses before the grand jury, and to answer questions not incriminating themselves, but later they were indicted. *Held*, that the indictment should not be quashed. *U. S.* v. *Price*, 39 N. Y. L. J. 2167 (Circ. Ct., S. D. N. Y., Aug. 1908).

The defendant in a criminal case cannot be made to go upon the witness stand. *Low* v. *Mitchell*, 18 Mo. 372. A witness, whether a party or not, may not be compelled to give testimony incriminating himself. *Coburn* v. *Odell*, 30 N. H. 540. The question in the principal case is whether the defendant, when compelled to be sworn as a witness, was a party to a criminal case. The weight of authority holds that criminal proceedings are not instituted until a formal charge has been made against the accused. The examination of witnesses before the grand jury is no part of the criminal proceedings against the accused, but is merely to assist the grand jury in determining whether such proceedings shall be commenced. *Post* v. *U. S.*, 161 U. S. 583. Grand juries may seek information from persons conversant with the matter under investigation, and are not bound to exclude a person because it may happen ultimately that an indictment be found against him. *U. S.* v. *Kimball*, 117 Fed. 156. A re-